(1) 95-421

Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

MOHAMMED MALEKZADEH
Petitioner

VS.

THE STATE OF TEXAS
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, FIRST JUDICIAL DISTRICT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

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18 pp

QUESTION PRESENTED

I. Whether the warrantless search of a briefcase that does not occur upon its seizure from its owner at the time of arrest, but does occur at the scene of arrest, is reasonable under the Fourth Amendment as a search incident to arrest and does not conflict with this Honorable Court's holding in **United States v. Chadwick, infra**.

LIST OF PARTIES IN APPELLATE COURT

Mohammed Malekzedah,

Appellant

The State of Texas,

Appellee

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REFERENCE TO OPINIONS OF LOWER COURT

The Opinion of the First Supreme Judicial District Court of Appeals of the State of Texas is produced in the appendix.

JURISDICTION

The ruling of the First District Court of Appeals was rendered on December 8, 1994. See A-3. The Petitioner timely petitioned the Texas Court of Criminal Appeals for discretionary review. The Petition for Discretionary Review was refused on May 31, 1995. Consistent with this Honorable Court's Rule 13, this Petition is timely filed. This Court's jurisdiction in the instant case is based on 28 U.S.C. § 1257, and United States Supreme Court Rule 10.

CONSTITUTIONAL PROVISION AT ISSUE

The Fourth Amendment to the United States Constitution states:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...."

STATEMENT OF THE CASE

Petitioner was indicted by a grand jury in Harris County, Texas for the felony offense of fraudulent possession of a prescription form. Petitioner entered a plea of not guilty, waived a jury, and proceeded to trial before the court. Prior to trial, Petitioner moved to suppress evidence seized from his briefcase on the grounds that the search and seizure was in violation of the Fourth Amendment.

The evidence established that during the course of a criminal investigation by the City of Houston Police Department, an arrest warrant was issued for Petitioner, as well, a search warrant for his business. Upon execution of the warrants, the police determined that Petitioner was not present, however, he arrived a short time later and was placed under arrest.

Upon his arrival, Petitioner was carrying his briefcase, which was seized by police as he was placed under arrest. Only later after his person and the business premises were searched, was the briefcase searched. The search resulted in the seizure of the blank prescription forms.

Petitioner argued that the briefcase was not located in the business, therefore, its search was not authorized by the search warrant. The First District Court of Appeals of Texas ruled that the briefcase was not searched pursuant to the warrant, but rather was searched incident to a lawful arrest.

Petitioner raised the federal question in the trial court by way of a motion to suppress evidence claiming the search of the briefcase was in violation of the Fourth Amendment. The Fourteenth

District Court of Appeals of Texas addressed the federal question by distinguishing the instant case from **United States v. Chadwick**, **infra.**, and finding the search was incident to arrest and, thus, constitutional.

ARGUMENT

I.

THE DECISION IS CONTRARY TO UNITED STATES SUPREME COURT PRECEDENT REGARDING THE LEGALITY OF THE SEARCH OF A CLOSED CONTAINER AS INCIDENT TO ARREST

The Fourth Amendment "protects people, not places"; more particularly, it protects people from unreasonable government intrusions into their legitimate expectations of privacy. **Katz v. United States**, 389 U.S. 347 (1967). A fundamental purpose of the Fourth Amendment is to safeguard individuals from unreasonable government invasions of legitimate privacy interests. **Wolf v. Colorado**, 383 U.S. 25 (1949).

In the instant case, Petitioner was in possession of a closed briefcase containing papers and other personal effects. By placing items in this closed receptacle, the Petitioner manifested an

expectation that the contents would remain free from public examination. Therefore, he was entitled to the protection of the Fourth Amendment Warrant Clause. *See* **United States v. Chadwick**, 433 U.S. 1 (1977).

In **Chadwick** at 13, this Court found that once federal agents had exercised exclusive control over a footlocker, no danger existed as to its contents that required removal prior to obtaining a valid search warrant. The Court then held that it was unreasonable to undertake the additional and greater intrusion of a search without a warrant. This Court made the following findings concerning the validity of a warrantless search incident to arrest,

> "... warrantless searches of luggage or other property seized at the time of an arrest cannot

be justified as incident to that arrest either if the 'search is remote in time or place from the arrest,' or no exigency exists. Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest." (Emphasis added).

433 U.S. 15

In the instant case, the testimony of the arresting officer showed that when the Petition arrived at his place of business,

he was in possession of a briefcase. (2 R. 192). At that point he was immediately placed under arrest, the briefcase seized, and his person searched for the safety of the officer. Id.

After his person was searched, a complete search was conducted of Petitioner's office and desk. (2 R. 193). Following the seizure of numerous documents found in the office, the briefcase was then opened and search. (2 R. 194). It was absolutely clear from the trial testimony that at the time the briefcase was searched it was not only out of his control, but was inaccessible since Petitioner had been arrested and presumably placed in handcuffs. Furthermore, the testimony established that there were four police officers present at the time of arrest, and since Petitioner was immediately restrained and

PUBLISHER'S NOTE:

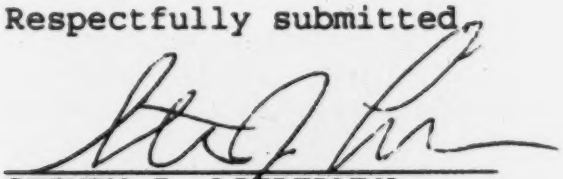
Page(s) 10 missing in original.

The First Judicial District Court of Appeals of Texas has rendered an opinion deciding a federal question in a way that conflicts with the decision of this Honorable Court in **United States v. Chadwick, supra**. Accordingly, review on writ of certiorari is mandated by Rule 10.1(c).

CONCLUSION

For the foregoing reason, the Petitioner respectfully submits that this Honorable Court should grant this Petition for Writ of Certiorari, reverse the judgment of the First Judicial District Court of Appeals of Texas, and remand this cause for a new trial.

Respectfully submitted,



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